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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 6.11.2006.

Sat Pal Sood .... Petitioner.

vs

Punjab Wakf Board .....Respondent.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Padam Jain,Advocate,for the petitioner.

Kiran Anand Lall, J.

The respondent filed a suit, under the Wakf Act, 1995 (to be referred as 'the Act'), for the ejectment of petitioner from the demised Wakf property, measuring 90' x 15' (approximately 150 sq. yards) and forming a part of khasra no.1083, shown with letters ABCD in the site plan attached with the plaint.

The petitioner contested the suit, whereupon the Tribunal framed the following issues, recorded evidence, and passed a decree for ejectment, directing him to hand over vacant possession of the premises to the respondent-wakf board, within three months from the date of decree:-

1. Whether the tenancy regarding the suit land has been terminated by the plaintiff? OPP
2. Whether the plaintiff is entitled for possession of the suit land? OPP
3. Whether suit is not maintainable? OPD

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4. Whether the plaintiff is estopped from filing the present suit for his own act and conduct? OPD

5. Relief.

Since no remedy of appeal is provided under the Act, the petitioner challenged the ejectment order, by filing this revision under Section 83 (9) thereof.

Undisputedly, the plot under reference was earlier allotted to one Surinder Kaur and later on it was allotted to the petitioner, in the year 1980 vide allotment order, Ex.P2.

There is a categorical statement of DW8 Mohammad Shoaib Quareshi, a Sectional Officer, Punjab Wakf Board, Chandigarh, on record, that it was a vacant plot when it was allotted to Surinder Kaur and also when it was allotted to the petitioner. In the allotment order (Ex.P2) of the petitioner, too, and the site plan prepared on its back, it had been clearly described, as a vacant plot. But, in the written statement, the petitioner set up the case that the property allotted to him, was a shop, and not a vacant plot. His further case was that the shop had been constructed by the previous allottee, Surinder Kaur. The latter appeared, as DW2, in support of his case, but no value can be attached to her testimony because, while discussing it, the Tribunal observed, in para no.12 of the judgment, that she could not even tell the date, month, or the year when the shop was constructed by her. She could also not tell if she got any site plan sanctioned from the competent authority, before constructing it. The other two witnesses, DW3 Manjit Singh and DW10 Sarwan Kumar, were also not in a

position to tell as to on which date, month, or year, the construction (of shop) over the plot was raised by her. On the basis of such evidence, the Tribunal rightly concluded that the plea of petitioner that shop had been constructed by the previous allottee (Surinder Kaur), and not by him, was clearly false.

It was categorically stipulated, in Note (i) at the bottom of the allotment order, Ex.P2, that no alterations or additions in the building/ property would be permissible without prior written permission of the Board, and any infringement of the conditions of allotment, would result into cancellation of allotment. It being an admitted fact that, at present, there exists a shop at the spot, and the failure of petitioner to substantiate his plea that the shop was constructed by the previous allottee, no fault can be found with the finding of the Tribunal that the petitioner had violated the terms and conditions of the allotment order, by raising construction on the plot. Yet another condition of the allotment order, was also violated by him, by putting the plot to a use, other than the one for which it was allotted. The plot, as per the allotment order, had been allotted for residential purposes, whereas, admittedly, the petitioner is putting it to a commercial use, by running a shop thereon and that, too, without the consent of the respondent-Board.

The petitioner had even not paid the rent of the plot, since 1.2.1991. It was only when he was served with a notice (dated 27.3.2002) under Section 106 of the Transfer of Property Act (to be referred as "the Act"), copy Ex.P3, that he sent a bank draft (no.035579 dated 3.4.2002) of Rs.10,000/-, to the respondent, as the amount of arrears of rent. The respondent, of course, had returned the bank-draft, vide letter dated

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10.4.2002, Ex.DA, on the ground that it could not be accepted as, due to violation of terms and conditions of the allotment order and non-payment of rent, the tenancy had already been terminated.

Learned counsel referred to the Apex Court judgment, reported as 2002 (1) Rent Control Reporter 514 *Rakesh Wadhawan vs. M/s. Jagdamba Industrial Corporation,* during the course of arguments. There cannot, of course, be any dispute with the proposition of law, laid down in this judgment. But, the same is of no use to the petitioner, as his ejectment was not ordered under the East Punjab Urban Rent Restriction Act, but is under the Transfer of Property Act, by serving a notice under Section 106.

Learned counsel also contended that, infact, notice under Section 106 of the Act was never served upon the petitioner. But, this contention, too, is against facts. The Tribunal has clearly found, in para no.14 of the judgment, that notice under Section 106 of the Act, Ex.P3, had been sent to the petitioner, through two modes. One, under a Postal Certificate, and the other, through a Registered A.D. Postal receipt of the registered cover is Ex.P4 and the postal certificate of the UPC, is Ex.P5. Since the registered notice was never received back as undelivered, the Tribunal had rightly drawn a presumption under law that it had been received by the petitioner. Infact, on receipt of this notice vide which he had been called upon to hand-over vacant possession of the premises within a period of 15 days, he had even tried to clear the arrears of rent (for a period of 11 years), by sending a bank draft of Rs.10,000/-, to the respondent. This fact also supports the conclusion of the Tribunal that he had received the notice of termination of tenancy. It does not, therefore, lie in his mouth to contend that notice under Section 106 of the Act, for terminating his

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tenancy, was not served upon him.

In view of the above, it is clear that the impugned order is perfectly valid and it does not suffer from any illegality or impropriety. The petition shall, therefore, stand dismissed, in limine.

6.11.2006. (Kiran Anand Lall)
vs. Judge.